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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 SHELTON LOCKETT, et al.,) CASE NO. CV-18-5838-PJW
11 Plaintiffs,)
12 v.) ORDER GRANTING DEFENDANTS' MOTION
13 COUNTY OF LOS ANGELES, et al.,) TO DISMISS PLAINTIFFS' FIRST
14 Defendants.) AMENDED COMPLAINT WITH LEAVE TO
15) AMEND
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I.

INTRODUCTION

19 This civil rights action arises out of an incident that occurred
20 on January 15, 2016, in which two Los Angeles County Sheriff's
21 deputies, Defendants Samuel Aldama and Mizrain Orrego, allegedly
22 illegally stopped and used unlawful force against Plaintiff Sheldon
23 Lockett. Lockett was arrested and charged with attempted murder,
24 which he claims was based in part on the deputies' false claim that he
25 had a gun at the time of the stop. Lockett was held in jail for eight
26 months. Plaintiffs Michelle Davis and Clyde Davis, Lockett's parents,
27 allege that, one month after Lockett was arrested, Los Angeles County
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1 Sheriff's deputies illegally searched their home looking for Lockett's
2 gun.

3 Defendants County of Los Angeles, Los Angeles County Sheriff's
4 Department, and Sheriff Jim McDonnell move to dismiss the First
5 Amended Complaint. They claim that Lockett's and his parents' claims
6 are barred by the two-year statute of limitations. They further argue
7 that Lockett's state law claims must be dismissed because he failed to
8 comply with the California Tort Claims Act. For the following
9 reasons, Defendants' motion to dismiss is granted with leave to amend.

10 II.

11 SUMMARY OF FACTS AND PROCEEDINGS

12 Plaintiff alleges that, on January 15, 2016, sheriff's deputies
13 Orrego and Aldama were driving their police car in the City of Compton
14 when they pulled over in front of a house where Lockett and his friend
15 were standing. (First Amended Complaint ("FAC") at ¶¶ 21-22.) Orrego
16 and Aldama got out of their car with their guns drawn and shouted
17 commands at Lockett and his friend. (FAC at ¶ 23.) Lockett became
18 frightened and ran. (FAC at ¶ 24.) Orrego and Aldama radioed other
19 deputies that Lockett had a gun and was fleeing. (FAC at ¶ 26.)
20 Lockett was later found hiding in the back of a nearby home. (FAC at
21 ¶ 28.) Though Lockett attempted to surrender, Orrego and Aldama
22 severely beat him with their fists, feet, batons, and Tasers and
23 yelled racial slurs. (FAC at ¶¶ 28-29.) After Lockett was under
24 arrest, one of the deputies rammed the end of a police baton in
25 Lockett's eye socket, which caused permanent damage. (FAC at ¶ 30.)
26 Lockett was charged with attempted murder and jailed for eight months
27 until his case was dismissed. (FAC at ¶ 33.)

1 Immediately after Lockett's arrest, his mother filed a citizen's
2 complaint against Defendants Orrego and Aldama. (FAC at ¶ 34.)
3 Approximately one month later, deputies served a search warrant on her
4 home, claiming to be looking for a gun belonging to Lockett, which
5 deputies knew did not exist. (FAC at ¶ 36.) During the search,
6 deputies damaged the home. (FAC at ¶ 37.)

7 On July 3, 2018, Plaintiffs filed a civil rights Complaint
8 against the County Defendants, Aldama, and Orrego. (Doc. No. 1.) On
9 August 22, 2018, Plaintiffs filed a First Amended Complaint, raising
10 the following 12 claims: (1) excessive force under 42 U.S.C. § 1983;
11 (2) *Monell* violations; (3) assault; (4) battery; (5) negligence;
12 (6) false arrest; (7) false imprisonment; (8) violation of California
13 Civil Code § 52.1 (the Bane Act); (9) violation of California Civil
14 Code § 51.7 (the Ralph Act); (10) unreasonable search and seizure;
15 (11) intentional infliction of emotional distress; and (12) negligent
16 infliction of emotional distress. (Doc. No. 16.)

17 III.

18 ANALYSIS

19 A. Standard of Review

20 Under Federal Rule of Civil Procedure 12(b)(6), a defendant is
21 entitled to dismissal of an action if a complaint lacks a legal theory
22 or alleges insufficient facts to support a legal claim. To survive a
23 motion to dismiss, the complaint must contain sufficient facts to
24 state a claim that is plausible on its face. *Ashcroft v. Iqbal*, 556
25 U.S. 662, 678 (2009). A claim is plausible on its face if the facts
26 alleged and the reasonable inferences that can be drawn from them
27 demonstrate that the defendant is legally liable for the misconduct
28 alleged. *Id.* In reviewing a motion to dismiss, the Court accepts as

1 true the factual allegations contained in the complaint and views all
2 inferences in a light most favorable to the plaintiff. *See Erickson*
3 *v. Pardus*, 551 U.S. 89, 94 (2007); *Lee v. City of Los Angeles*, 250
4 F.3d 668, 679 (9th Cir. 2001).

5 If a statute of limitations defense is apparent on the face of a
6 complaint, a defendant may raise the defense in a motion to dismiss.
7 *Roches v. Cty. of Santa Clara*, 2018 WL 905940, at *2 (N.D. Cal. Feb.
8 15, 2018) (*citing Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th
9 Cir. 1980)).

10 B. Defendants' Motion to Dismiss Lockett's Claims as Untimely is
11 Granted with Leave to Amend

12 Defendants contend that Lockett's claims are time-barred because
13 the action was not filed within California's two-year statute of
14 limitations for personal injury actions. *See Cal. Code Civ. Proc.*
15 *§ 335.1*. Section 1983 does not contain its own statute of
16 limitations. Instead, federal courts apply the state's personal
17 injury statute of limitations, subject to any state tolling provisions
18 that are not inconsistent with federal law. *Wallace v. Kato*, 549 U.S.
19 384, 387 (2007). Under federal law, a claim accrues when the
20 plaintiff knows or has reason to know of the injury which is the basis
21 of the action. *TwoRivers v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1999).

22 Here, the incident involving Defendants' alleged use of excessive
23 force and unlawful arrest took place on January 15, 2016, which is the
24 date that Lockett's claims accrued. (FAC at ¶ 21.) Consequently,
25 absent tolling, Lockett was required to file his Complaint no later
26 than January 15, 2018. Lockett, however, filed his Complaint on July
27 3, 2018, more than five months later.

1 Lockett argues in his opposition to the motion that his claims
2 were automatically tolled for eight months under California Code of
3 Civil Procedure § 352.1 while he was imprisoned on the attempted
4 murder charges. But, as Defendants point out, just four months ago,
5 the California Court of Appeal held that section 352.1's tolling
6 provision only applies to state prisoners serving time in state
7 prisons and does not apply to pre-trial detainees in county jails.
8 *Austin v. Medicis*, 21 Cal. App. 5th 577 (Ct. App. 2018), *reh'g denied*
9 (April 11, 2018), *review denied* (June 13, 2018). This Court is bound
10 by the state appellate court's interpretation of state law.

11 Lockett asks for leave to amend so that he can try to cure this
12 problem. The Court is not inclined to grant leave on this issue,
13 however, because it does not appear that Lockett can cure it.

14 Lockett argues in the alternative that he is entitled to tolling
15 under California Government Code § 945.3. This section provides for
16 tolling in any civil action for damages against a police officer or
17 police department based on conduct "relating to the offense for which
18 the accused is charged, including an act or omission in . . .
19 arresting or detaining the accused, while the charges against the
20 accused are pending before a justice, municipal or superior court."
21 Cal. Gov't Code § 945.3. Defendants argue that Lockett has failed to
22 allege facts that would show that he is entitled to tolling under
23 § 945.3. For example, they argue that Lockett has not alleged that
24 his claims are related to the attempted murder charge, nor has he
25 alleged that he is entitled to tolling during the time the criminal
26 charges were pending.

1 Lockett disagrees. He argues in his opposition that the criminal
2 charges cannot be separated from his civil claims and that he is
3 entitled to tolling for the time the criminal charges were pending.

4 While Lockett did not plead any facts supporting tolling under
5 § 945.3 in his FAC, he may be able to do so and would then be entitled
6 to tolling for the period that the criminal charges were pending
7 against him. *See Harding v. Galceran*, 889 F.2d 906, 908 (9th Cir.
8 1989). Lockett is granted leave to file a Second Amended Complaint
9 and include allegations supporting tolling under § 945.3.

10 Lockett contends that he is also entitled to equitable tolling.
11 Defendants argue that Lockett has failed to establish entitlement to
12 equitable tolling. They are both right: Plaintiff has not alleged
13 sufficient facts to establish his entitlement to equitable tolling but
14 it appears that he may be able to. For this reason, he is granted
15 leave to amend to try to set forth sufficient allegations to support
16 equitable tolling.

17 C. Defendants Motion to Dismiss the Parents' Claims as Untimely is
18 Granted With Leave to Amend

19 Defendants contend that the parents' unlawful search claim is
20 barred by the two-year statute of limitations. On the face of the
21 FAC, it appears that Defendants are right. The search occurred in
22 February 2016 and the parents filed suit in July 2018, more than two
23 years after the search. The parents contend that they are entitled to
24 the delayed discovery exception to the statute of limitations because
25 they did not know that the search was based on false statements until
26 after the criminal charges against their son were dismissed and he was
27 released from custody in August 2016. (Plaintiffs' Opposition at 12-
28 13.) The parents also contend that they are entitled to equitable

1 tolling. Defendants point out that the FAC does not contain any
2 allegations supporting these defenses to the statute of limitations.
3 The Court agrees with Defendants but concludes that the parents, too,
4 should be given an opportunity to amend the FAC and try to cure these
5 deficiencies.

6 D. Lockett's State-Law Claims Must be Dismissed for Failure to
7 Comply With the California Tort Claims Act

8 Defendants contend that Lockett's state-law claims must be
9 dismissed because he failed to timely file an administrative tort
10 claim, as required under state law. Lockett argues in his opposition
11 that he was unable to file his tort claim because he was in jail. He
12 asks that the Court overlook his failure to file. (Plaintiffs'
13 Opposition at 13.)

14 This request is denied. Even if the Court were inclined to grant
15 Lockett tolling for the time he was in jail, his argument would still
16 fail because he failed to file a tort claim after he was released from
17 custody and the time for filing a claim has now run. See Cal. Govt.
18 Code § 911.4 (written application to present a late claim must be
19 presented within a reasonable period of time not to exceed one year
20 after the accrual of the cause of action). As such, Defendants'
21 motion to dismiss Lockett's state-law claims for assault, battery,
22 negligence, false arrest, false imprisonment, Bane Act violations,
23 Ralph Act violations, intentional infliction of emotional distress,
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1 and negligent infliction of emotional distress is granted without
2 leave to amend.

3 IT IS SO ORDERED.

4 DATED: October 25, 2018.

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7 PATRICK J. WALSH
UNITED STATES MAGISTRATE JUDGE
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